

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/771,917
Filing Date: February 4, 2004
Applicant: Harald Schlag
Group Art Unit: 1745
Examiner: Helen Chu
Title: DURABLE, LOW TRANSIENT RESISTANCE BETWEEN
BIPOLAR PLATE AND DIFFUSION MEDIA
Attorney Docket: 8540G-000216 (Client Ref. GP-303519)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

REMARKS

Claims 1-14 and 25-38 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103

Applicants respectfully disagree that with the conclusion that the rejection of the claims under 35 U.S.C. §§102 and 103 should be sustained.

Applicants respectfully reassert the arguments presented in the Appeal Brief submitted September 26, 2008 and disagree with the rejections maintained in the Examiner's Answer mailed December 22, 2008. Specifically, Applicants disagree with the characterization of the term "channel" in the Examiner's Answer.

The Examiner's Answer, at page 10, states that:

[I]nterpreting the claims broadly, the fluid manifold can be construed as a fluid flow channel or flow channels as recited in the claimed invention. MPEP 2106 II C states "While it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. A broad interpretation of a claim by USPTO personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended." The Random House Dictionary defines a "channel" to be a "route through which anything passes or progresses." Hence, a fluid manifold that delivers fuel into each fuel cell can be construed as a flow channel.

Applicants respectfully submit that this is an unreasonably broad interpretation of the claims and is not consistent with the MPEP.

MPEP §2111.01(III) indicates that "[i]n construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be

compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor”. (emphasis added). The definition “a route through which anything passes” is clearly inconsistent with the use of the term “channel” by the present application. It is clear through the arguments previously presented that Applicants do not consider the manifold passage (30) to be one of the claimed channels. Rather, as indicated in the body of the rejection, elements (20, 21) are properly considered the flow channels in Schmid (U.S. Pat. No. 6,495,278). This is consistent with the interpretation that would be made by one of ordinary skill in the art.

Applicants additionally note that “[t]he ordinary and customary meaning of a term may be evidenced by a variety of sources, including ‘the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.’” (MPEP §2111.01(III), citing Phillips v. AWH Corp., 75 USPQ2d 1321, 1327). Applicants have clearly indicated the proper meaning of the term “channels” throughout prosecution of the present application. This meaning is consistent with the state of the art and the use of the word “channels” as applied to fuel cells. Therefore, Applicants respectfully submit that elements (20, 21) should be considered the channels in Schmid, not element (30).

Further, the definition used in the Examiner’s Answer is not the definition most consistent with Applicants’ use of the term “channels” in the claims. Rather, a series of flow channels in a fuel cell plate separated by land portions would be considered elements (20, 21) of Schmid. Applicants note an alternate definition from the Random

House Dictionary cited in the Examiner's Answer. The term "channel" is additionally defined as "any structural member having the form of three sides of a rectangle". While Applicants do not suggest that the term "channels" in the claims is limited to a rectangular cross-section, it does include a passage (or groove) having an open side. The above definition is more appropriate relative to the description and ordinary use in the art than the definition suggested in the Examiner's Answer. "If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms". (MPEP §2111.01(III)). When the term "channels" is properly interpreted, Applicants respectfully submit that Schmid fails to teach or render obvious the fuel cell of claims 1-14 and the claimed fuel cell system of claims 25-38.

Therefore, Applicants respectfully submit that the rejection of claims 1-14 and 25-28 has been maintained in error for these reasons in addition to those previously set forth. Reconsideration and withdrawal of the rejection of claims 1-14 and 25-38 are respectfully requested.

Respectfully submitted,

Dated: February 3, 2009

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